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Chairman:	Mr. AFONSO	(Mozambique)
later:	Mr. SANDOVAL (Vice-Chairman)	(Ecuador)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 127: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/46/79, A/46/317-S/122823, A/46/335, 372, 383 and Add.1 and 587; A/C.6/46/4; A/C.6/46/L.8)

1. Mr. GIANG (Viet Nam) said that, since the adoption of the programme for the activities to be commenced during the first term of the United Nations Decade of International Law, a number of significant results had been achieved, including the completion of the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and the Handbook on the peaceful settlement of disputes between States. Much progress had also been made by the International Law Commission, the United Nations Commission on International Trade Law and other specialized bodies in the codification of international law.

2. During the current session of the General Assembly, many delegations had referred to the emergence of a new world order. Whether such an order had emerged or not, it did not seem to be what many States desired. The world for which the international community was striving should be one of peace, justice, national sovereignty, cooperation and equality, and especially of equal opportunity for all countries in achieving development and prosperity. Such a world must be governed, first and foremost, by universally accepted rules of law. Accordingly, the elaboration of an international legal framework which would encompass many areas of political and economic relations and which would assist States in coordinating their activities was of great significance.

3. While his delegation welcomed the report of the Secretary-General on the first year of the Decade (A/46/372), it was concerned at the financial and organizational aspects of the programme. In addition to voluntary contributions, the Decade should have a regular budget. The General Assembly should also consider establishing, as soon as possible, a trust fund to be administered by the Secretary-General in accordance with resolution 45/40. The success of the Decade also greatly depended on the development and the implementation of its programmes. While the Working Group on the United Nations Decade of International Law had partially fulfilled its mandate in that regard, it was hard to see how the Working Group could coordinate both the activities of the United Nations system and those of Member States. While the Sixth Committee had an important role to play in the progressive development and codification of international law, his delegation feared that it could have very little influence beyond that immediate area. Accordingly, a competent body was needed to assist the Working Group.

4. The programmes of the Decade should give priority to the study of international law. Such study should focus on both the traditional areas of international law and new areas which required codification. Since many countries did not have sufficient qualified personnel or the necessary

(Mr. Giang, Viet Nam)

resources to be informed continually about new developments in international law, the topics to be studied during the Decade should be determined and appropriate financing should be provided by the United Nations.

5. His delegation deeply appreciated the United Nations Programme of Assistance, Teaching, Study, Dissemination and Wider Appreciation of International Law. A number of lawyers from Viet Nam and other developing countries had greatly benefited from the Programme. However, under its current financial circumstances, the Organization could not afford to organize enough training courses and seminars for even a small number of lawyers from developing countries which were badly in need of assistance. Accordingly, his delegation believed that the provision by the United Nations of international law study materials to both developed and developing countries could be one of the most cost-effective ways of promoting the teaching, study, dissemination and wider appreciation of international law.

6. The computerization of data on the status of multilateral treaties should be completed as soon as possible. Such information would be very useful both to countries which were parties to those treaties and those which were not.

7. His delegation believed that the judgements and advisory opinions of the International Court of Justice should be published in all the official languages of the United Nations. That would facilitate an understanding of the Court's increasingly important role in the peaceful settlement of disputes.

8. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the Soviet Union regarded the proclamation of the United Nations Decade of International Law as an important step in the establishment of a reliable and secure legal order. It welcomed the programme for the activities to be commenced during the first term of the Decade and believed that the premise that international peace and security could be maintained only if States acted in accordance with international law must lie at the heart of the Decade and that each individual activity must contribute to the incorporation of that concept into the daily practice of inter-State relations. His delegation also supported the idea that the acceptance of and respect for international law meant, in the first place, the participation of States in the basic universal multilateral conventions and strict observance of their provisions. The Soviet Union had been an initiator and participant in the formulation of nearly all the important modern multilateral treaties and agreements. It was currently a party to over 14,000 multilateral and bilateral agreements.

9. In July 1991 the Supreme Soviet had adopted some important decrees to expand the Soviet Union's participation in the monitoring mechanisms for human rights in accordance with the basic international agreements in that sphere. The Soviet Union had become a party to the Optional Protocol to the International Covenant on Civil and Political Rights, thereby recognizing the competence of the Human Rights Committee to receive and consider communications from Soviet citizens who claimed that their rights had been

(Mr. Ordzhonikidze, USSR)

violated; in accordance with article 41 of that Covenant it had made a declaration that it recognized the competence of the Human Rights Committee to receive complaints from a State Party that another State Party was not fulfilling its obligations under the Covenant; in accordance with article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination the Soviet Union had declared that it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive communications from individuals or groups of individuals within its jurisdiction claiming that their rights had been violated for reasons prohibited under the Convention; and it had withdrawn its reservation to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thereby agreeing that the Committee against Torture could examine reports of systematic torture in any State Party to the Convention either in cooperation with that State or independently. Moreover, the Soviet Union had recognized the competence of the Committee against Torture to consider complaints by a State Party that another State Party was not fulfilling its obligations under the Convention (art. 21) and to consider communications from individuals claiming to be victims of torture (art. 22). Those steps were in implementation of the statement made to the United Nations by Mr. Gorbachev, President of the Soviet Union, in December 1988 regarding that country's intention to participate more actively in the international monitoring procedures. The Soviet Union had thus become one of the countries which had undertaken maximum responsibility under international legal agreements in the human rights field.

10. The implementation and strict observance of multilateral agreements could be promoted through: steps to increase the number of States parties to international agreements, including regular appeals to States and interpretation of the provisions of treaties for their benefit; the development of existing monitoring and implementation mechanisms, and the creation of new ones, possibly in the form of additional protocols to agreements; the attainment of a uniform interpretation and practical application of the norms and principles of international law embodied in international agreements through increased discussion at the inter-State and non-governmental levels; further development of international law in accordance with the requirements and realities of the modern world; codification in new areas, above all the environment, human rights, international terrorism and illegal drug trafficking; and the study and formulation of recommendations for the most effective and acceptable ways of incorporating conventional norms into the domestic law of States. An important role in achieving those objectives could be played by the United Nations, its organs and specialized agencies, and also by non-governmental organizations in the legal field. A comprehensive programme of specific actions should be formulated within the framework of the Decade, providing for active participation by intergovernmental and non-governmental organizations, scientific circles and the public.

(Mr. Ordzhonikidze, USSR)

11. Practical steps must be taken to enhance the effectiveness of the International Court of Justice and agree on mutually acceptable conditions for recognition by all States, and in the first place the permanent members of the Security Council, of the compulsory jurisdiction of the Court, particularly in relation to the fight against terrorism and drug trafficking, diplomatic law, specific cases of compensation for damage and other matters in respect of which there were already clear-cut international legal norms. His delegation also felt that the role of the Permanent Court of Arbitration should be enhanced in the area of the peaceful settlement of disputes; that Court had been established in accordance with the 1899 Hague Convention on the Pacific Settlement of Disputes at the first International Peace Conference, convened on the initiative of Russia.

12. His delegation felt that the programme for subsequent terms of the Decade should be formulated without delay, and that the coordinating body for the implementation of the Programme should be the Working Group of the Sixth Committee. The attainment of the goals of the Decade should not be confined to legal forums of the United Nations and its specialized agencies but should become an integral part of the work of all United Nations bodies and should provide direction to their specific programmes to ensure the primacy of law in various areas of international cooperation.

13. Ms. WILLBERG (New Zealand) said that recent events had underscored the timeliness of declaring the 1990s as the United Nations Decade of International Law and of the purposes of the Decade, especially the promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice. In that connection, she drew attention to paragraph 8 of document A/C.6/46/L.8, referring to the acceptance of the compulsory jurisdiction of the Court. As the President of the Court had recently pointed out, there was a greater understanding among Governments of the role that an international court could play in their mutual relations and a steady growth in the number of declarations accepting a measure of compulsory jurisdiction; her delegation welcomed both those developments and encouraged those States which had not yet done so to make a declaration under Article 36, paragraph 2, of the Statute of the Court.

14. The establishment of the Secretary-General's Trust Fund to assist States in the settlement of disputes through the Court was a valuable step towards ensuring that resort to the Court was a realistic option for all States, including those with limited resources. New Zealand was an enthusiastic supporter of the Trust Fund's aims and had contributed to it at an early stage.

15. With regard to the teaching, study, dissemination and wider appreciation of international law, the key factor was the ready availability of information. Her country had recently computerized its central treaties register, thus recording, in an easily accessible form, information on the status of both bilateral and multilateral treaties.

(Ms. Willberg, New Zealand)

16. With regard to the provision of assistance and technical advice to States, in particular to developing countries, New Zealand had sponsored the participation of South Pacific lawyers in the International Law Seminar held at Geneva in June 1991. Earlier in the year, her country had hosted the Annual Meeting of Pacific Island Law Officers, designed to facilitate contacts and the exchange of views among lawyers in the region. Over the past year, New Zealand had continued to provide assistance throughout the region on international law issues, particularly in the area of environmental law. Her delegation hoped that the Decade would provide an appropriate focus for the elaboration of suitable environmental protection measures.

17. The report of the Secretary-General had provided a good basis for discussion in the Working Group. Her delegation welcomed the spirit of consensus which had been evident throughout those discussions.

18. Mr. GONDRA (Argentina) said that document A/46/372 was of great value because it presented a broad panorama of the activities of international organizations and other agencies concerned with international law. Updated information on that subject should continue to be provided in the future.

19. With regard to the promotion of means and methods for the peaceful settlement of disputes between States, and in the light of the comments in paragraph 33 of the report, he reaffirmed his delegation's view that, while resort to the International Court of Justice should be encouraged, it should not be given priority over other means. It should be noted, for example, that in 1991 the Governments of Argentina and Chile had agreed to establish a court of arbitration for the purpose of settling some border disputes. Another dispute between the two Governments had also been successfully resolved through mediation.

20. His delegation considered that it was of the utmost importance for States to comply with the obligation to settle disputes peacefully. It was the prerogative of the parties involved to determine which of the judicial and non-judicial means available to them in international law was most appropriate for settling their differences. Accordingly, the Decade should focus on encouraging States to use any and all means of peaceful settlement and on facilitating their access thereto. In that connection, he urged the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to consider the draft conciliation rules proposed by Guatemala.

21. As to the encouragement of the progressive development of international law, a number of recent events, such as accidents at nuclear reactors, petroleum spills on the high seas and the use of the environment in armed conflicts, highlighted the need for the international community to identify principles and, where appropriate, to develop international rules for the protection of the environment.

(Mr. Gondra, Argentina)

22. While his delegation recognized the importance of the ratification of and strict compliance with conventions such as those concluded under the auspices of the International Maritime Organization and the International Atomic Energy Agency, it also believed that there was still room for exploration and development in connection with the international protection of the environment. Accordingly, the United Nations Conference on Environment and Development deserved support, as did the negotiations begun in 1991 with a view to the adoption of agreements on climate change and biodiversity.

23. His delegation noted with satisfaction the practical measures described in document A/46/372 for the promotion and dissemination of international law, particularly the plans to computerize information on the status of multilateral treaties, the resumption of the publication of the United Nations Juridical Yearbook and the proposed publication, in English and French, of the summaries of the judgments and advisory opinions of the International Court of Justice dating back to 1949.

24. Some delegations had voiced concerns and made suggestions which were mentioned in the report of the Working Group (A/C.6/46/L.8). His delegation believed that the implementation of those suggestions could greatly facilitate the work of many permanent missions and of the ministries of legal affairs of Member States; accordingly, they should be examined in greater detail.

25. Mr. GARRO (Peru) said that, in making the acceptance of and respect for the principles of international law the first objective of the Decade, the General Assembly had underscored its conviction that, more than ever before, international law constituted the primary means of interrelationship between States. His delegation firmly supported the proposals in that regard which had been included in the programme of the Decade.

26. The promotion of means and methods for the peaceful settlement of disputes was also a central objective. The activities to be undertaken in that connection should focus on creating an international climate which encouraged resort to the mechanisms of peaceful settlement mentioned in Article 33, paragraph 1, of the Charter of the United Nations, or to any means which might have been developed in specific cases. Respect for the principle of free choice should always be guaranteed.

27. Some delegations had referred to environmental law as an area which was especially conducive to the progressive development of international law. However, his delegation reaffirmed its view that development and international economic cooperation should play a central role in the elaboration of a framework of more just and stable international relations, and that those items should be the subject of careful consideration with regard to the future programmes of the Decade.

28. Lastly, the promotion and dissemination of international law was an area in which major progress could and should be made. However, such progress was

(Mr. Garro, Peru)

possible only to the extent that international cooperation on behalf of countries with scarce resources could be strengthened. Non-governmental organizations could play a significant role in that regard.

29. The contemporary international situation created both hopeful and dangerous prospects. The disappearance of ideological conflict, the concentration of power in the hands of a small group of States, the persistence and the exacerbation of poverty among vast sectors of the world's population and the intensification of ethnic and nationalist rivalries meant that the 1990s would be filled with both possibilities and risks.

30. The manner in which such challenges would be confronted depended, to a large extent, on the success of the international order which was just beginning to emerge. It was to be expected that the legal structure of the post-cold war era would be perceived differently by various States. His delegation shared the view of the Secretary-General that any interpretation of international law which corresponded to the interests of one group of States but was viewed with suspicion by other States could not contribute to the development of international law. That view should guide the international community's long-term perspectives on the Decade as well as the choice of its future activities.

31. Mr. BOREL (Observer, International Committee of the Red Cross) said that the International Committee of the Red Cross (ICRC) supported the objectives of the Decade, in the conviction that greater respect for international law would strengthen protection of and assistance to war victims and facilitate the settlement of certain conflicts.

32. Referring to the promotion of international humanitarian law, he said that one of the recommended measures for promoting multilateral treaties was the periodic publication of the status of ratifications of and additions to them and, in that context, the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949, was to be commended. Despite constant progress, efforts needed to be made to promote the two additional Protocols, which, inter alia, significantly strengthened the protection of civilian populations. In addition, the large number of internal armed conflicts conferred particular importance on Protocol II. In the context of the Decade, ICRC wished to invite those States which had entered reservations to the 1949 Conventions to reconsider their decisions. In particular, the reservations made in respect of article 85 of the Convention relative to the Treatment of Prisoners of War, aimed at preventing the extension of the application of that Convention to prisoners of war prosecuted for acts committed prior to capture, merited such reconsideration.

33. On the question of the implementation of international humanitarian law, ICRC was of the opinion that the international community should concentrate, as a matter of priority, on respect for and implementation of existing humanitarian laws. The concept of respect also covered the duty to adopt, in

(Mr. Borel)

peace time, domestic measures capable of permitting respect in times of conflict. States should therefore take all necessary measures at the legal and practical levels to incorporate the provisions of the treaties into their domestic legal order. The obligation to ensure respect for humanitarian law imposed on the community of States Parties to the Conventions and the Protocols Additional thereto a joint responsibility for the application of the law in all armed conflicts. Governments that were not parties to a conflict must accordingly react to all serious violations of humanitarian law and avoid complicity through inaction.

34. With respect to the procedures for associating States more systematically with efforts aimed at the implementation of international humanitarian law, ICRC would seek to facilitate the task of States in their domestic legislation by affording them access to a documentation centre which would include a computerized data bank, organizing regional seminars, drawing up model legislation, and promoting cooperation among States with similar legal systems. In addition, the competent services of ICRC were always available to provide advice or information.

35. Given the undoubted importance of an effective verification procedure to the better application of international law, an International Fact-Finding Commission had been established as of 25 June 1991 pursuant to article 90 of Additional Protocol I. The task of the Commission was to inquire into any facts alleged to be a grave breach of international humanitarian law, without ruling on the law or passing judgement. It also had the task of facilitating, through its good offices, the restoration of respect for the law. In comparison to the inquiry mechanism provided for in the Geneva Conventions, the Commission offered the advantage of permanency, thereby avoiding the difficulties inherent in establishing an inquiry mechanism while a conflict was under way. Twenty-three States had recognized in advance the competence of the Commission and ICRC urged those States bound by Additional Protocol I, which had not yet done so, to join them.

36. The question of respect for international humanitarian law by United Nations peace-keeping forces, whose presence in the field was increasing and which were sometimes called on to use force to defend themselves, was also a pertinent one. In that connection, ICRC welcomed the efforts made by the United Nations in providing for the inclusion of a clause on respect for international humanitarian law in the documents signed by States providing contingents to peace-keeping forces.

37. Turning to the question of the progressive development of international humanitarian law, ICRC was of the view that the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons illustrated the complementarity of the initiatives taken within the International Red Cross and Red Crescent Movement and the efforts of the United Nations. Such complementarity was basic to the preservation of the existing level of protection, particularly in interrelated areas of international law where overlapping occurred.

(Mr. Borel)

38. It was important to ensure that new normative developments should not weaken the legal guarantees or the forms of institutional protection that already existed. Consequently, while emphasizing the implementation of and respect for existing law, ICRC was undertaking studies which could lead to normative developments in a number of areas, including participation in several expert meetings on the law of armed conflicts at sea and on international law governing certain conventional weapons which might be deemed to be excessively injurious or to have indiscriminate effects. ICRC had also convened a conference of experts to revise the technical annex to Protocol I, concerning identification. Lastly, ICRC had expressed its readiness to convene a group of experts to study the question of the protection of the environment in times of armed conflict by examining the content, limitations and possible weaknesses of existing treaties. ICRC intended to submit proposals to the twenty-sixth International Conference of the Red Cross and Red Crescent with regard to those areas of possible developments in international humanitarian law.

39. Turning to the subject of the encouragement of the teaching, study, dissemination and wider appreciation of international humanitarian law, he noted that, while dissemination was primarily an obligation of States, ICRC also had a statutory responsibility in that area. Over the previous 15 years or so, its efforts to encourage dissemination had taken the form of identifying and establishing dissemination methods, which were published regularly in a specialized review; the training of disseminators to convey the universal message of humanity in the language of their culture; the publication of popularizing texts, as well as legal works and technical manuals; the production of films; and the design of practical tools, such as plastic-coated cards showing the basic rules of conduct for combatants. Particular emphasis was placed on the armed forces, which were responsible for applying the rules and which also benefited from their application.

40. In the area of the teaching of human rights, which was associated with the teaching of humanitarian law, ICRC had been cooperating for a number of years with the United Nations Centre for Human Rights, and had participated in the annual UNITAR course at The Hague Academy of International Law. Academic circles provided an ideal environment for the training of disseminators and ICRC was accordingly seeking to organize seminars for professors and students, such as the course organized each summer in Warsaw jointly with the Polish Red Cross. Ad hoc courses were also organized in diplomatic academies and national study institutes. Journalists too were of special importance because of the impact they had on mobilizing public support on humanitarian issues and ICRC had also organized a number of seminars for them.

41. International humanitarian law called for unceasing attention and there was an urgent need for combined efforts on the part of the members of the international community to promote the relevant values and norms in order to ensure that they were not only formally accepted but also understood in terms of their universal essence. In contributing to respect for international

(Mr. Borel)

humanitarian law, ICRC was defending the intrinsic value of such norms while at the same time making a modest contribution to the main objective of the Decade, which was to substitute law for violence in international relations.

AGENDA ITEM 124: UNITED NATIONS PROGRAMME OF ASSISTANCE IN THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW (A/46/372 (chap. II D), A/46/610 and Corr.1)

42. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel) introducing the report of the Secretary-General (A/46/610 and Corr.1), said that paragraph 22 of section I reflected the fact that during 1990-1991, the Codification Division of the Office of Legal Affairs, in cooperation with the missions of Member States in New York, had prepared the Handbook on the peaceful settlement of disputes between States, which had been approved and recommended for publication by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at its 1991 session. During the same biennium, the Codification Division had completed the publication in all official languages of the fourth updated version of the book The International Law Commission, which contained inter alia the texts of multilateral conventions and drafts originating in the Commission's work.

43. Paragraphs 70 and 71 of the report contained a succinct account of the efforts undertaken by the Secretariat during the past biennium and to be pursued during the next to reduce as much as possible the backlogs of the Treaty Series and the United Nations Juridical Yearbook. Paragraphs 75 to 89 contained the conclusions of the United Nations Secretariat regarding alternative means of publishing the judgments and advisory opinions of the International Court of Justice in the other official languages of the Organization in addition to English and French.

44. With respect to section II, in formulating guidelines for the execution of the Programme in the biennium 1992-1993 within the framework of the United Nations Decade of International Law, account had been taken of the fact that the resolutions concerning the Decade did not provide new budgetary resources for the teaching, study, dissemination and wider appreciation of international law, but relied instead on financing such activities from the existing overall level of appropriations and voluntary contributions from States. Therefore, new activities should be undertaken only if the overall level of appropriations and voluntary contributions from States made them possible.

45. Section IV of the report set out the administrative and financial implications of United Nations participation in the Programme. A specific appropriation of $305,100 had been included in the regular budget for 1990-1991 with a view to financing a minimum of 15 fellowships a year under the International Law Fellowship Programme, as well as the cost of travel grants for participants in the regional seminars and refresher courses organized by UNITAR. A comparable amount ($316,000) had been included in the proposed budget for the biennium 1992-1993 for the same purpose.

(Mr. Fleischhauer)

46. It should be noted in that connection that voluntary contributions were governed by the principle that States, organizations and individuals could freely choose the component of the Programme to which they wished their respective contributions to be applied; that they did so choose was evident from paragraphs 152 to 156 of the report.

47. Section V concerned matters related to the present and future membership of the Advisory Committee on the Programme as well as summaries of the meetings held by the Advisory Committee during the past biennium. In that connection, he urged the various regional groups to present their candidates for membership in the Advisory Committee for the term of office beginning 1 January 1992.

48. Mr. Sandoval (Ecuador), Vice-Chairman, took the Chair.

49. Mr. MONTES de OCA (Mexico) said that the report of the Secretary-General (A/46/610) provided information on the various activities undertaken in an area which was one of great interest to the members of the Committee. Mexico supported the recommendation of the Advisory Committee that its membership should be increased to permit it to more effectively discharge its mandate "to formulate relevant guidelines for the Programme's activities and to report to the Sixth Commitee on the activities carried out under the Programme in accordance with such guidelines" (General Assembly resolution 45/40, annex, IV.1). In the view of his delegation, that special responsibility gave the Advisory Committee a proactive role, without taking away its traditional functions.

50. His delegation wished to thank the Governments and voluntary contributors, which had provided fellowships to enable participants from developing countries to attend the international law seminars at Geneva.

51. The internships in the Office of Legal Affairs offered possibilities for cooperation with regard to training between the Office and members of permanent missions to the United Nations and could enable the staff of missions to familiarize themselves with the Organization's methods of work and to make better use of the excellent service offered by the legal branch of the library. His delegation considered that selected members of the Advisory Committee on the Programme could compile, under the guidance of the Codification Division or of UNITAR, updated information and precedents in international law of relevance to the topics to be considered by the Sixth Committee during the forty-seventh session of the General Assembly. Such information would be of great use to many delegations, particularly to their new members; it could be provided a few days prior to the commencement of the Sixth Committee's work and throughout the session, with a view to standardizing as far as possible the familiarity of delegations with each item and with the Committee's methods of work. Such a service could be provided on an experimental basis during the forty-seventh session to supplement the information provided in the annotated agenda, thereby enriching the debates,

(Mr. Montes de Oca, Mexico)

enhancing the effectiveness of the Committee's work and making better use of the Organization's resources.

52. His delegation wished to express appreciation to the Codification Division, to UNCITRAL and to the Office for Ocean Affairs and the Law of the Sea for the organization of seminars and the preparation and publication of studies in their respective fields. The Office for Ocean Affairs and the Law of the Sea, in its view, could make a further contribution by preparing a glossary of basic terms, elaborating curricula for university training, and possibly compiling graphic material that was crucial to training in the law of the sea. His delegation also hoped that the Treaty Series would benefit from dissemination by modern computerized techniques, which would resolve the problem of the inadequacacy of incomplete collections. It was gratified that, as noted in paragraph 89 of the report, it would be possible to translate into the other official languages of the Organization in addition to English and French and to publish, in all official languages, the summaries of the judgments and advisory opinions of the International Court of Justice (1949-1990), as provided by the Court's Registry. It was regrettable, however, that it would not be possible at the current stage to translate and publish the complete judgments and opinions of the Court in the manner requested.

53. Lastly, his delegation wished to thank UNESCO for its numerous publications, including a handbook on international law, International law: achievements and prospects. UNESCO had stated that, while the translation of the handbook into Spanish was not envisaged, a request for such translation would stand a better chance of receiving favourable consideration if it was submitted on a regional basis. His delegation, together with those of Colombia, Costa Rica, Ecuador, Spain, Uruguay, and Venezuela, therefore wished to request jointly that the Programme should communicate to UNESCO a formal request for such a translation to be prepared.

54. Mr. ALVAREZ (Uruguay) said that his delegation found the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law to be one of the most important instruments for the development of that branch of law within the United Nations, particularly at the beginning of the second year of the United Nations Decade of International Law, whose programme emphasized, in chapter IV, the need to encourage by all available means a broad awareness of international law, which formed the backbone of international relations. Respect for the rule of law was essential to the harmonious coordination of the community of States and to the proper functioning of the United Nations.

55. With respect to the suggested publication of analytical summaries of the judgements and advisory opinions of the International Court of Justice, mentioned in paragraph 86 of the report (A/46/610), his delegation considered that such summaries would be useful and should be widely distributed to all Member States so as to bring the decisions of the Court to the attention of many public and private institutions.

(Mr. Alvarez, Uruguay)

56. With reference to the fellowship grants mentioned in paragraph 159 of the report, his delegation would like to suggest a study of the comparative advantages of increasing the number of fellowship grants and organizing national courses in the various regions. Such courses, as Uruguay could attest, would reach a very wide audience in the countries involved, at very little cost to them and with cost-effective results.

57. His delegation suggested that the membership of the Advisory Committee on the Programme should be increased, in view of the interest it had generated. Similarly, the current item should perhaps be reviewed annually during the Decade of International Law.

58. Uruguay had enthusiastically adopted the objectives of the Decade and had taken related action in a number of areas. With regard to promotion of the acceptance of and respect for the principles of international law, and encouragement of the progressive development of such law and its codification, the responsible national committee had determined that it could contribute in two ways: the reactivation of procedures for approval of multilateral treaties signed by Uruguay and promotion of the conclusion of new treaties, particularly on legal relations between the States that would be parties to MERCOSUR, which were interested in legal cooperation at all levels. With respect to encouragement of the teaching, study, dissemination and wider appreciation of international law, it had been decided that each participating body would draw up detailed lists of activities for the stages of the Decade so as to develop a national programme of activities by 1992. Among other ideas, it had been suggested that knowledge of international law should be disseminated beyond the universities, for instance to secondary schools, teachers' colleges, institutes of communications sciences, and so on. It had also been suggested first, that Decade-related material should be distributed to the national press with a view, inter alia, to familiarizing journalists with the important role played by international law in international relations, and second, that symposia, seminars and lectures should be organized, not just nationally but also internationally, with the support of all the institutions participating in the programme. It was likewise suggested that consideration should be given to the possibility of founding international law libraries as suggested in the programme.

59. The national committee had also proposed that the various Uruguayan missions in the region should be consulted with a view to fostering contacts with similar bodies in other countries and coordinating activities relating to the programme.

60. Ms. TUNKU RUS (Malaysia) said that the world was entering what might turn out to be a very positive phase of cooperation among States, with the United Nations playing a central role. There was a genuine desire by Member States to adhere to the rule of law, and given proper and equitable preparations, the world might be on the threshold of a new era. Member States must seize the opportunity to turn the new dynamics for cooperation to their advantage and work towards achieving long-term global peace and stability.

(Ms. Tunku Rus, Malaysia)

61. The report of the Secretary-General (A/46/610) was illuminating, but the activities conducted under the Programme fell short of the actual needs and requirements of Member States, particularly the developing countries, which lacked expertise in international law. Although the activities were commendable, they had benefited only a few countries.

62. The lack of funds was a major constraint on the Programme's activities. There was therefore an urgent need to seek more funds for the Programme. Her delegation acknowledged that sources of funds were limited, but felt that the main donors would do well to consider an additional contribution to the Programme as part of their multilateral development assistance. If developing countries lacked an in-depth understanding and appreciation of international law, the ongoing exercise of codifying the different regimes of international law would not have the maximum impact on the vast majority of mankind.

63. Her delegation would like to propose that the Secretary-General should take steps towards the establishment of a trust fund for the Programme similar to that established for the International Court of Justice. Member States and other bodies whose interests were served by the Programme, such as foundations, educational institutions and multinational corporations, might contribute to it. The current dependence on ad hoc contributions for the implementation of some activities limited the scope of the Programme. A trust fund for the Programme could effectively contribute to the success of the United Nations Decade of International Law.

64. With regard to section V of the report, her delegation supported the recommendation of the Advisory Committee that its membership should be increased, and hoped that there would be a consensus resolution of the matter in keeping with the spirit of cooperation and understanding that had characterized the Sixth Committee.

65. In conclusion, her delegation wished to reiterate that in view of the unprecedented interest of Member States in respecting and promoting international law, the time was right for enhancing the Programme's activities. Investment in the Programme would help to prepare a solid foundation for a better world for future generations based on the rule of law.

66. Mr. Afonso (Mozambique) resumed the Chair.

67. Mr. ABRAHAMSEN (Denmark) said his Government considered that the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was of the utmost importance, particularly during the Decade. For a number of years Denmark had made a voluntary contribution to cover the costs of the participation of representatives from developing countries in the International Law Seminar and in 1991 it had contributed 30,000 Danish kroner for that purpose. Since only eight other Governments had made similar contributions in 1991, his Government appealed to other Governments to consider contributing in the future towards

(Mr. Abrahamsen, Denmark)

the costs of the participation of representatives from developing countries in the International Law Seminar as a concrete way of promoting the Decade of International Law.

68. Mr. MIRZAEE YENGEJEH (Islamic Republic of Iran) said that his delegation had no difficulty in accepting the proposed programme for the next two years of activity of the United Nations Programme of Assistance in the Teaching, Study Dissemination and Wider appreciation of International Law since it was substantially similar to the previous programme and the main activities had proven useful to the purpose under consideration.

69. Paragraph 186 of the report of the Secretary-General (A/46/610) referred to the usefulness of the Programme for developing countries; he recalled that both General Assembly resolution 44/23 and the programme of activities for the first term of the United Nations Decade of International Law attributed great importance to the areas of the teaching, study, dissemination and wider appreciation of international law.

70. Since the successful implementation of new sessions of the Geneva International Law Seminar, the granting of additional fellowships in the United Nations-UNITAR Fellowship Programme in International Law as well as other possible activities mentioned in paragraph 140 of the report all depended on the availability of voluntary contributions, he appealed once more to States, individuals and institutions to provide financial assistance to the Trust Fund.

71. The holding of international law seminars at the regional and national levels was of great importance for the teaching and dissemination of international law and could reach wide audiences; his delegation strongly recommended the expansion of such seminars in future years with the assistance of United Nations organs and regional organizations such as the Asian-African Legal Consultative Committee.

72. His delegation welcomed the expansion of UNCITRAL's activities in the field of training and assistance, which was of great importance to developing countries, and the plans of the secretariat to increase the programme of country seminars, especially for developing countries (para. 56). It supported the idea of organizing a congress of international trade law in the context of UNCITRAL's twenty-fifth session and expected that experts from all major legal systems, as well as from various geographical regions, would be invited to present papers to the congress.

73. His delegation was glad that copies of United Nations legal publications would continue to be provided to the institutions in developing countries that had received such publications in the past (para. 138) and urged that similar treatment should be extended to other developing countries at their request.

(Mr. Mirzaee Yengejeh, Islamic Republic of Iran)

74. It supported the view that the membership of the Advisory Committee should be increased, for the reasons mentioned in paragraph 199 of the report. The current membership did not reflect the criteria of equitable geographical distribution and equitable representation of the group of States that most benefited from the Programme of Assistance. The expansion of membership could pave the way for increased and broader based contributions to the Trust Fund and bring in new ideas and opportunities that would enrich the Programme.

The meeting rose at 5.15 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
40th meeting
held on
Tuesday, 19 November 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 40th MEETING

Chairman: Mr. AFONSO (Mozambique)

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27 November 1991

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 124: UNITED NATIONS PROGRAMME OF ASSISTANCE IN THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW (continued) (A/46/372, A/46/610 and Corr.1)

1. Miss BURLACU (Romania) said that her delegation had noted with interest the activities undertaken by the Secretariat, and in particular by the Codification Division of the Office of Legal Affairs, to advance the Programme of Assistance. It welcomed, in particular, the completion of the Handbook on the peaceful settlement of disputes between States and shared the satisfaction expressed at the publication by UNESCO of the book International law: achievements and prospects. At the same time, it was concerned about the lack of resources, which had prevented the expansion of the Programme.

2. In Romania, the teaching of law was going through a phase of adaptation aimed at reflecting the objectives of the Decade. National academic institutions and at least 15 major non-governmental organizations were making valuable contributions to the dissemination and wider appreciation of international law. In July 1991, the recently established European Foundation "Nicolae Titulescu" had organized a series of courses on international law for young diplomats, with classes given by English, French and Swiss experts. Joint activities such as seminars, round tables and courses had also been organized by Romanian governmental and non-governmental institutions in order to promote greater knowledge and appreciation of international law.

3. As a member of the Advisory Committee, her delegation believed that the possibility of increasing future membership of that body should be considered with flexibility and that a generally accepted solution should be identified in order to satisfy the demands of the various regional groups.

4. Lastly, her delegation wished to suggest that in future the item currently under consideration should be discussed on a yearly basis together with the item entitled "United Nations Decade of International Law", since the wider appreciation of international law and its dissemination were already treated as a main component of the Decade, as could be seen from the programme for the Decade.

5. Mr. NYAMIKEH (Ghana) emphasized the crucial importance of the Programme to developing countries, such as his, where the teaching, study, dissemination and wider appreciation of international law were still in an early stage. The end of the cold war, which had inhibited the wider acceptance of and resort to international law as a useful tool for settling international disputes, had ushered in a new era in which a renewed thrust needed to be given to the wider acceptance of the rule of law as against the rule of force. His delegation viewed with satisfaction the wider recognition and acceptance of the principles and norms of international law in the evolving new order and commended the United Nations and its subsidiary organs for the good work done in that field.

(Mr. Nyamikeh, Ghana)

6. In the decades ahead, the United Nations would assume an increasingly prominent role in the evolving new order, which would impose significant legal, economic and social challenges on the Organization. In addition to the promotion and wider acceptance of existing principles and norms of international law, there was need for new legal instruments to regulate the relations between States in the areas of trade, protection of the environment, and respect for human rights.

7. Wider acceptance of the principles and norms of international law required increased public awareness of them, and his delegation therefore congratulated the initiators of the Programme of Assistance. Since the inception of the Programme, conferences, courses, seminars and workshops had been organized in different parts of the world, which had been of particular benefit to professors, students and experts in international law from the developing countries. The provision of such training for civil servants, diplomats, lawyers and legal advisers to Governments needed to be further strengthened so that those who advised Governments in that field would be able to encourage them and the general public to adhere to the principles and norms of international law. His delegation therefore supported the call for the establishment of institutions to promote the teaching and wider appreciation of international law in developing countries, where such institutions were lacking. It also appealed to States and other contributors to the Programme to increase their contributions.

8. Although the publication and dissemination of texts on international law was one way of promoting the objectives of the Decade, the cost of such publications was sometimes prohibitive for people in developing countries. He therefore proposed that they should be made available to institutions of higher learning in developing countries on a free or subsidized basis.

9. Lastly, his delegation supported the recommendation of the Advisory Committee that its membership should be increased, in view of the prominent role which the teaching, study, dissemination and wider appreciation of international law would play in the decade ahead.

AGENDA ITEM 130: CONSIDERATION OF THE DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER AND OF THE DRAFT OPTIONAL PROTOCOLS THERETO (A/44/10)

10. Mr. TETU (Canada), reporting on the informal consultations on the topic, which had been resumed pursuant to General Assembly resolution 45/43, said that some members had reiterated their general support for the draft articles as adopted by the International Law Commission, while at the same time expressing their readiness to consider possible amendments in the interest of consensus. Other members had reserved their position until it was clearer whether a useful and generally acceptable text could be arrived at by remedying what they viewed as shortcomings and imbalances in the existing draft. Yet other members had remained unconvinced of the need for, or

(Mr. Tetu, Canada)

usefulness of, a new convention on a matter already regulated by widely accepted conventions, the application of which had not given rise to any serious difficulties over the previous 30 years. The consultations had focused on draft article 28, on protection of the diplomatic bag, draft article 17, on inviolability of temporary accommodation, and draft article 18, on immunity from jurisdiction. After a thorough exchange of views, several informal drafts of the three articles had been circulated.

11. Against the background of the lack of success during the forty-fifth session to find a generally acceptable way of reconciling the protection of the legitimate contents of the bag with the protection of the interests of the receiving States and the prevention of abuse of the bag, two draft texts had been proposed for article 28. The first proposal was worded as follows:

> "1. The diplomatic bag shall be inviolable wherever it may be. Subject to the provisions of paragraphs 2 to 5, it shall not be opened or detained and shall be exempt from examination directly or through electronic or other devices.
>
> "2. If the competent authorities of the receiving State have serious reason to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may as an exceptional measure request that they examine the bag by electronic or other technical devices routinely used at ports or airports for the examination of incoming or outgoing items in the presence of an authorized representative of the sending State, provided that the examination does not affect the confidentiality of correspondence or documents. The sending State may refuse the examination, in which case the bag shall be returned to its place of origin.
>
> "3. If the request referred to in paragraph 2 is accepted and after the examination the competent authorities of the receiving State still have serious reason to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag be opened.
>
> "4. If the request is accepted, the bag shall be opened by an authorized representative of the sending State in the presence of an authorized representative of the receiving State.
>
> "5. If the request is refused by the authorities of the sending State, the bag shall be returned to its place of origin."

The second proposal for article 28 read as follows:

> "1. The diplomatic bag shall be inviolable wherever it may be. Subject to the provisions of paragraphs 2 and 3 of this article, the diplomatic bag shall not be opened or detained and shall be exempt from examination.

(Mr. Tetu, Canada)

"2. If the competent authorities of the receiving State or the transit State have serious reasons to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag be opened in their presence by an authorized representative of the sending State.

"3. If the request is accepted, the examination of the contents of the diplomatic bag shall be conducted with restraint and the correspondence and documents contained therein shall not be inspected.

"4. If the request is refused by the authorities of the sending State, the bag shall be returned to its place of origin."

12. With regard to article 17, the discussion at the forty-fifth session had opened prospects for a possible compromise solution which would consist in dropping the concept of inviolability stricto sensu, and adopting instead a pragmatic approach whereby the authorities of the receiving or transit State would refrain from any intrusion into the temporary accommodation which could jeopardize the safety or inviolability of the bag; at the same time, paragraphs 2 to 4 of article 17 would be retained in their existing form. It had also been felt that, under certain conditions, the deletion of article 17 could be envisaged as part of a broader package deal (A/C.6/45/SR.42, para. 43). Against that background, a proposal had been submitted at the current session under the title "Temporary accommodation of the diplomatic courier carrying a diplomatic bag".

"1. The authorities of the receiving State or the transit State shall refrain from any intrusion into the temporary accommodation of the diplomatic courier carrying a diplomatic bag. However:

"(a) Prompt protective action may be taken if required in case of fire or other disaster;

"(b) Inspection or search may be undertaken where serious grounds exist for believing that there are in the temporary accommodation articles the possession, import or export of which is prohibited by the law or controlled by quarantine régulations of the receiving State or the transit State.

"2. In the case referred to in paragraph 1 (a), measures necessary for the protection of the diplomatic bag and its inviolability shall be taken.

"3. In the case referred to in paragraph 1 (b), inspection or search shall be conducted in the presence of the diplomatic courier and on condition that it be effected without infringing the inviolability either of the person of the diplomatic courier or of the diplomatic bag and would not unduly delay or impede the delivery of the diplomatic bag. The

(Mr. Tetu, Canada)

diplomatic courier shall be given the opportunity to communicate with his mission in order to invite a member of that mission to be present when the inspection or search takes place.

"4. The diplomatic courier shall, to the extent practicable, inform the authorities of the receiving State or the transit State of the location of his temporary accommodation."

13. As a result of the previous year's consultations on article 18, the possibility had been raised of covering the concerns underlying that article in article 16, bearing in mind that, as a rule, a person discharging official functions on behalf of the State was not answerable for the acts performed in the exercise of those functions (A/C.6/42/SR.42, para. 45). Thus it was currently proposed to delete article 18 and to include in article 16, as adopted by the Commission, two additional paragraphs:

"2. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under international law and provided that the measures concerned can be taken without infringing his temporary accommodation under article 17, the inviolability of his person or the diplomatic bag entrusted to him.

"3. The diplomatic courier is not obliged to give evidence as a witness on matters connected with the exercise of his functions. He may, however, be required to give evidence on other matters, provided that this would not unduly delay or impede the delivery of the diplomatic bag."

On the other hand, the view was expressed that article 16 as adopted by the Commission should be left untouched.

14. Other articles of concern, in particular articles 13, 15, 19, 20 and 30, had not been discussed.

15. Mr. CALERO RODRIGUES (Brazil) said that, in view of its importance, the statement by the representative of Canada should be circulated among delegations and should be made available at the next session of the General Assembly to assist the Committee in its consideration of the item.

16. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to that suggestion.

17. It was so decided.

18. Mr. NEDELCHEV (Bulgaria) said his delegation was convinced that the codification and progressive development of international law on the topic under consideration would consolidate the stability of diplomatic and consular relations, in which the diplomatic courier and the diplomatic bag played a major role.

(Mr. Nedelchev, Bulgaria)

19. His delegation had expressed general support for the draft articles adopted by the Commission and at the same time indicated its readiness to consider possible amendments in the interest of their broader acceptability and efficiency. It was deeply convinced that compromise was the only way to establish a balance between the interests, rights and obligations of the sending State and the receiving State (or the State of transit). It felt that the informal consultations in 1990 had been useful in that they had helped to pave the way for a generally acceptable solution; the consultations at the current session had focused on the prospects for possible compromise solutions opened up by the 1990 consultations.

20. The proposed new text for article 17 took into account the positions of some delegations that article 17, as prepared by the Commission, put an unjustifiably heavy burden on the receiving State or the transit State. The new text was in full conformity with the conclusions of the Chairman of the Sixth Committee concerning the 1990 consultations on the prospects for a possible compromise solution. Accordingly, the concept of the inviolability of the temporary accommodation had been replaced by that of the inviolability of the diplomatic bag, while it rested within that accommodation. Furthermore, a more pragmatic approach had been followed whereby the authorities of the receiving or transit State would refrain from any intrusion into the temporary accommodation which could jeopardize the safety or inviolability of the bag.

21. The proposal made with respect to article 18 took into account the serious objections to that article on the part of certain delegations as well as the suggestion made during the 1990 informal consultations as the basis for a compromise solution. The aim of the new text to be added to article 16 was to ensure personal protection of the diplomatic courier, bearing in mind that, as a general rule, a person discharging official functions on behalf of a State was not answerable for the acts performed in the exercise of those functions. Furthermore, it was made clear that exceptions to that general rule could be applied in respect of the diplomatic courier provided that the measures concerned would not infringe the inviolability of his person or the diplomatic bag entrusted to him and would not unduly delay or impede the delivery of the diplomatic bag.

22. Two concrete proposals had been made in respect of article 28 with a view to elaborating a uniform regime of protection applicable to all kinds of bags. The regime envisaged in the proposals was based on the generally recognized principle of protection of the legitimate contents of the bag and on the need to prevent possible abuses of the bag. Both proposals were built on several common elements which were necessary to ensure a reasonable balance between the interests of the sending and receiving States: the inviolability of the diplomatic bag wherever it might be; the prohibition in principle of its detention or examination; the right of the receiving State, under certain explicitly stated exceptional conditions, to request examination of the bag; the right of the sending State to accept or refuse the examination of the bag;

(Mr. Nedelchev, Bulgaria)

the prohibition on inspecting documents and correspondence and on violating their confidentiality; the presence of an authorized representative of the sending State during the whole process of examination; and the obligation of the sending State to return the bag to its place of origin in case of refusal to agree to its examination.

23. With regard to the permitted methods of examination, two different options had been suggested: to allow, under certain conditions, the use of routine electronic means of examination of the bag and its opening or to confine the method to the so-called physical examination.

24. The topic was of particular importance because it was the first topic on which the Commission had completed its work during its current term of office. In considering the Commission's future programme of work, several delegations in the Committee had rightly pointed out that the Commission should concentrate on the completion of the remaining topics before taking up new ones. Obviously, the same logic could equally well be applied to the future endeavours of the Committee and its working relations with the Commission. Accordingly, the Committee should pay due attention not only to topics currently under consideration by the Commission but also to topics in respect of which the Commission had completed its consideration and all the possibilities available to achieve a generally acceptable solution had not yet been explored. His delegation would welcome a decision for the continuation of the consideration of the draft articles at the next session of the General Assembly with a view to arriving at generally acceptable solutions; it felt that it would be useful to establish a working group within the Committee to perform that task.

25. Mr. GONDRA (Argentina) recalled that during the general debate in the Committee in 1990 on the draft articles submitted by the Commission, most delegations had expressed satisfaction at the completion of the draft and supported the adoption and conclusion of an international convention; some delegations had suggested that the General Assembly should convene a conference of plenipotentiaries to study the draft articles and conclude such a convention. A number of delegations, including his own, had indicated that they were open to dialogue and negotiation aimed at developing a text which would meet with general agreement and facilitate the adoption of a decision on the draft.

26. In the informal consultations held during the previous session of the General Assembly, the articles on which there were differences of opinion had been identified as articles 13, 15, 17, 18, 19, 20, 28 and 30. During the consultations at the current session it had been clear that the differences of opinion continued to be limited to those articles. His delegation felt that the concrete proposals made on articles 17, 18 and 28 could, if there was sufficient political will, pave the way for a solution that would accommodate the positions of all delegations.

(Mr. Gondra, Argentina)

27. He noted that the Commission had been working on the topic for 14 years, at the request of the General Assembly. Various courses of action were possible in respect of the draft articles, including their adoption in their current form as submitted by the Commission or continuation of consultations at the next session. The draft articles could be adopted by means of a resolution of the General Assembly either in the form of an international convention (perhaps a protocol to existing conventions) or of guidelines for States. While his delegation felt that not all the work of the Commission necessarily had to result in international conventions, it believed that all possible efforts should be made to find generally acceptable solutions within a reasonable period of time so as not to waste 14 years of work by the Commission. In 1992 efforts should continue to reach agreement, through consultations, on the draft articles and, if disagreement persisted, the Committee should consider taking a final decision on the matter.

The meeting rose at 4.10 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
41st meeting
held on
Wednesday, 20 November 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 41st MEETING

Chairman: Mr. AFONSO (Mozambique)

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A/C.6/46/SR.41
29 November 1991

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 133: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (A/46/348 and Add.1)

1. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the Secretary-General's report (A/46/348 and Add.1), recalled that the item had been included in the Committee's agenda at the forty-fifth session of the General Assembly following a proposal by the representatives of Austria and Czechoslovakia contained in document A/45/141. The two delegations had noted that although the Vienna Convention on Consular Relations of 24 April 1963 had proven its great value, it concentrated on consular privileges and immunities and lacked precise rules regarding consular functions. That lacuna had been filled over the years by a large number of bilateral consular agreements regulating those functions in greater detail but, useful as they were, those agreements, in the view of the delegations of Austria and Czechoslovakia, could not be a substitute for a universal convention. To remedy that shortcoming and standardize the law on the subject, the two delegations had felt it desirable to formulate an additional protocol to the Convention and they had submitted detailed provisions which could serve as a basis for the formulation of such a protocol.

2. The General Assembly had adopted resolution 45/47 in which, noting that one of its functions in promoting international cooperation consisted in initiating studies and making recommedations for the purpose of encouraging the progressive development of international law and its codification, it had taken note with interest of the proposal concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations and had requested the Secretary-General to seek the views of Member States and of other States parties to the Convention on the proposal and on the procedure to be followed in considering the question, and to submit a report thereon to the General Assembly at its forty-sixth session. In accordance with that resolution, the Secretary-General had sent a note dated 21 February 1991 to all Member States and to other States parties to the Convention. In response to that note the Secretary-General had received replies from 15 States: Austria, Bolivia, Ecuador, Jamaica, Luxembourg, Mexico, Mongolia, Norway (on behalf of the Nordic countries), the Philippines, Romania, Switzerland, Ukraine, the Soviet Union, Uruguay and Zimbabwe. Those replies appeared in the report of the Secretary-General.

3. As could be noted, the views of States varied as to substance. Although some States supported the proposal to elaborate an additional protocol, others drew attention to difficulties in the formulation at the world level of rules concerning consular functions.

4. Mr. TOMKA (Czechoslovakia), speaking on behalf of the delegations of Austria and Czechoslovakia, said that the Vienna Convention on Consular Relations was one of the first international instruments prepared by the International Law Commission. It had been well received by the international

(Mr. Tomka, Czechoslovakia)

community and, as of 1 October 1991, 132 States had become parties to it. However, it concentrated primarily on the establishment of consular relations and on consular privileges and immunities; consular functions and their exercise were regulated in only a brief manner in a single article, article 5. That had led some States to conclude bilateral consular conventions and over 200 such conventions, most of which were concerned mainly with questions of consular functions as such, had been concluded since 1963. Those agreements were fairly common between developed countries or between such countries and certain developing countries, but were rare between developing countries. Bilateral regulation, while offering to two States the possibility of taking into account specific aspects of their mutual relations, also had objective limits; that method required considerable effort not only on the part of the negotiators but also on the part of those who had to approve the results achieved; moreover, no State could in practice regulate consular functions at the bilateral level with all members of the international community. In that situation, it would seem appropriate to fill the lacuna by means of a multilateral legal instrument.

5. In 1990 his delegation and the delegation of Austria had submitted draft articles for such an instrument in an annex to document A/45/141; that draft did not aim to be exhaustive or definitive but to serve as a possible basis for future work. The General Assembly, in resolution 45/47, had taken note with interest of the proposal and had requested the Secretary-General to seek views on the subject. The report of the Secretary-General (A/46/348 and Add.1) reproduced in extenso the replies received from 14 Member States and from one State party to the Convention. An analysis of the replies revealed that the initiative had met with a generally favourable response although some States had said that the advantages and feasibility of concluding an additional protocol should be considered carefully.

6. The two delegations stressed that the proposed instrument should be without prejudice to other international agreements in force and should not prevent States from concluding international agreements; it should be residual in nature. The following consular functions were defined in the draft: issuance of travel documents, acting as notary and civil registrar and similar functions, safeguarding the rights of minors and other persons under guardianship, and exercising rights of supervision and inspection of ships and aircraft. He suggested that a working group of the Committee should be set up at the forty-seventh session of the General Assembly to study the draft in more detail, taking into account the views expressed by States.

7. Mr. VAN DE VELDE (Netherlands), speaking on behalf of the 12 States members of the European Community, said that the proposal concerning the elaboration of an additional protocol aimed at supplementing and clarifying the provisions of the Vienna Convention on Consular Relations. The non-exhaustive enumeration of the most important consular functions in article 5 of the Vienna Convention had been considered at the time to be a compromise, characterized by a certain lack of precision. It must be

(Mr. Van De Velde, Netherlands)

determined whether there was a need to maintain that compromise. It had to be assumed that a number of States would not favour too precise a specification and would, if the need for an explicit definition of consular tasks in the relationship between two countries arose, favour regulating those consular functions in a bilateral agreement.

8. The delegation of Luxembourg had responded to the Secretary-General's request for comments on behalf of the 12 States members of the European Community (A/46/348). In their reply the Twelve noted that many States parties to the Vienna Convention had concluded bilateral consular agreements and might have no need for a new multilateral instrument on consular functions. However, not every State party to the Convention had such a network of bilateral consular agreements and some States might see advantages in an additional protocol. The advantages of uniformity would have to be weighed against a possible limitation on the freedom to negotiate with other States on a bilateral basis. In the light of article 16 of the draft additional protocol, the key legal consequence of becoming a party to the protocol appeared to be that of being precluded from agreeing that consuls could perform a lesser number of functions in their relations with another specific State party than those listed in the additional protocol. Even if article 16 were to be deleted, the listing of consular functions in the additional protocol would assume a "residual character", thus giving a definite advantage, in bilateral negotiations, to States which opposed a reduction of the consular functions.

9. The Twelve submitted that careful consideration of the advantages to be reaped from an additional protocol and of the possibilities of success in negotiating it was called for, taking into account the problems of harmonization of domestic legislation. The advantages of progressive development of international law and of concluding further multilateral instruments in the field of consular relations should be assessed against the possible disadvantages of a limitation on States wishing to negotiate consular treaties, tailored to specific circumstances, on a bilateral basis. Before deciding on the best approach to deal with the issue in the future, a sufficient number of replies to the Secretary-General's request for views should be awaited.

10. Mr. SHESTAKOV (Union of Soviet Socialist Republics) said that the Vienna Convention on Consular Relations was an important legal instrument for regulating the complex field of consular law which had facilitated the effective solution of many problems connected with the activities of consular missions. The draft additional protocol was intended to promote the clarification and uniform interpretation of the consular functions defined in general terms in the 1963 Convention which in future, if appropriately completed, could facilitate the application of the articles of the Convention and the work of consular posts as a whole. His delegation considered it essential that the proposal should be carefully studied by the Committee and that its significance for the work of consular posts be determined.

(Mr. Shestakov, USSR)

11. He recalled that, during the discussion in the International Law Commission on the draft articles on consular relations and immunities, there had been differences of opinion as to how to draw up a list of consular functions and whether to include a general list or specific details; in the end the view had prevailed that there should be a general list. It had been argued that it was unrealistic to try to list all the various problems which arose or could arise in future for consular officials; that most consular functions fell under the operation of the domestic law of the sending State and could not be regulated in detail by international law; that the Commission had already adopted the draft Convention on Diplomatic Relations in which the functions of a diplomatic mission were listed in general form; and that defining consular functions in general terms would provide the necessary flexibility. Thus it was possible that the draft protocol would create additional difficulties in carrying out everyday consular functions. In that connection consideration could be given to making the protocol optional or advisory in nature, in the form of a handbook or reference guide. That idea was not new; at the time of the discussion of the consular convention in the International Law Commission, it had first been proposed that there should be special commentaries to the text listing consular functions in detail. Such a document would assist States in their consideration of complex questions of consular activity without imposing international legal obligations on them that might be unacceptable because of established practice, domestic law or other factors. At the same time it would be possible to provide a list of precise rules for consular functions, as the authors of the draft protocol wished.

12. Article 1, paragraph 1, of the draft protocol needed to be clarified, since it virtually excluded honorary consuls from its sphere of application, although in the sense of the Vienna Convention they performed functions similar to those carried out by consular officials. His delegation had doubts about article 4, concerning the right of consular officials to draw up legal acts and contracts or authenticate them in notarial form. In addition to the difficulties that could arise in establishing the correspondence of such acts with the provisions of the Protocol, there was the question of the ability of consular officials to appreciate the nuances of legal acts or contracts as well as the question of responsibility for possible adverse consequences resulting from mistakes made by consular officials.

13. With regard to article 5, paragraph 1 (a), consular premises could hardly be turned into a warehouse for the storage of valuables and other articles belonging to nationals of the sending State; that could give rise to a range of problems, including damage as a result of fire or other natural causes. His delegation also had doubts about the need for consular officials to "accept" items from the authorities of the receiving State for return to their owners (para. 1 (b)); in such cases consular officials could only be expected to assist in the return of such articles, since in many cases consulates could not provide safer storage for valuables than the relevant State services. In general, the Committee needed to consider the advisability of attributing the

(Mr. Shestakov, USSR)

functions listed in article 5 to consular officials, since they could be diverted from performing their main task of protecting the interests of the sending State and its nationals (individuals and legal entities) in the receiving State within the limits allowed by international law.

14. His delegation agreed that article 14 should be studied further, taking into account existing legal norms and practice. The five-day period envisaged in article 15, paragraph 1, for notifying the consular post of the preventive detention, arrest or other restriction of the personal freedom of a national of the sending State was too long and could be reduced to three days on condition that the authorities had not been able to notify the consular office earlier, i.e. immediately after the detainment. The protocol should also include a provision on the obligation of the consul to issue visas within fixed or shorter time-limits and a maximum reasonable period for the issue of visas, not exceeding, for example, three weeks, could be recommended to a State; that step could regulate existing practice and exclude situations of excessive delay in the issuance of visas. In general, the draft protocol was a fairly good basis for future work and the discussions in the Committee should be directed towards mutually acceptable decisions.

15. Mr. REZAIAN (Islamic Republic of Iran) said that the 1963 Vienna Convention on Consular Relations was an important international instrument, resulting from the valuable work done by the International Law Commission. It had so far played a significant role in regulating consular relations between States and in promoting cooperation and understanding among them. Nevertheless, in view of the unprecedented expansion of political, economic and cultural relations which had taken place among States since the adoption of the Convention, it was necessary to initiate a study on the elaboration of an additional protocol on consular functions. Such a protocol could fill the existing lacuna in the definition of consular functions, which many States had tried to fill through bilateral agreements. Such bilateral agreements, however, did not create a uniform and generally acceptable practice in the field of consular relations and the preparation of an international instrument, particularly during the United Nations Decade of International Law, appeared necessary.

16. With regard to the appropriate framework for the consideration of the topic, his delegation supported the idea of establishing a working group within the Sixth Committee during the forty-seventh session of the General Assembly.

17. Mr. KORZACHENKO (Ukraine) said that at a time when it was actively engaged in establishing direct consular relations with neighbouring and other States on the basis of its Independence Act of 24 August 1991, Ukraine believed that the elaboration of an additional protocol represented a useful effort in the codification and progressive development of international law.

(Mr. Korzachenko, Ukraine)

18. The Vienna Convention on Consular Relations did not contain an exhaustive list of specific consular functions. Article 73 of the Convention provided for the possibility of filling that lacuna by means of bilateral consular agreements; however, it would seem advisable to consider the effectiveness of a universal method to regulate problems not encompassed by the Convention and to reduce recourse to customary law, which gave rise to complications. The additional protocol would also be useful for States which did not have diplomatic, consular or trade relations with each other.

19. It was commendable that the wording of the draft protocol took into account the provisions of agreements and practices which affected consular functions and that the authors had not undertaken to codify the entire range of international practice in the field of consular functions but affirmed that customary international law should continue to govern questions not expressly regulated in the articles.

20. Certain provisions in the additional protocol could enhance existing international practice. Article 15, paragraph 1, was more aptly formulated than article 35, paragraph 1 (b), of the Vienna Convention; it provided for notification of the arrest or other restriction of the personal freedom of a national if the person concerned did not object to it rather than in the event that such a national should require it; it also established a time-frame for the giving of notification. A period of, for example, four days should be set. The draft protocol should indicate the powers of a consul with regard to matters of inheritance; regulate in greater detail the question of the freedom of communication between a consul and the nationals of the State he represented, including the consul's right to a mandatory meeting with his nationals; and include a provision on his obligation to issue visas within fixed, preferably shorter, time-limits. The additional protocol should not contain any provisions which would be prejudicial to the rights and obligations deriving from agreements already concluded between States and should not impede the conclusion of new agreements under international law.

21. Ms. KOFLER (Austria) said that the authors of the draft additional protocol welcomed the view that efforts to supplement and specify the provisions of the Vienna Convention on Consular Relations of 1963 by an additional protocol thereto dealing with consular functions were a useful exercise and could fill a lacuna in that field. In the interest of the progressive development of international law, an internationally acceptable instrument should more specifically define the scope of consular functions, thereby contributing to the universal application of the relevant rules. While bilateral consular agreements provided a certain degree of flexibility in reflecting the specific needs of two countries, such an approach had objective limitations since no country could bilaterally regulate its relations with every other member of the international community. Austria and Czechoslovakia therefore believed that a multilateral approach in elaborating specific rules on consular functions would be useful to the international community.

(Ms. Kofler, Austria)

22. The representative of the Netherlands, speaking on behalf of the Twelve States members of the European Community, had stated that certain countries were opposed to a more precise specification of consular functions. The representative of the USSR, for his part, had pointed out that problems could arise if the rules were too detailed. The intention of the authors, however, was not to attempt to regulate all the details since customary international law would continue to govern questions that were not expressly dealt with by the proposed new instrument. The authors, nevertheless, agreed with the view expressed by the representative of the USSR that the matter should be considered in the Sixth Committee before a final conclusion was reached. Careful study of the subject was required before a community of views could emerge and an acceptable solution found. An appropriate forum for such consideration could be a working group set up during the forty-seventh session of the General Assembly to study the questions of substance raised in the joint Austrian-Czechoslovak proposal as well as in the different comments and suggestions that had been made during the debate or submitted in written form. The working group would also need to consider the question of the legal nature of the proposed instrument. Its objective should be to submit to the General Assembly concrete proposals which would be acceptable to all segments of the international community. The authors hoped that the idea of establishing such a forum would find general support within the Committee.

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (continued) (A/C.6/46/L.11)

23. Ms. KOFLER (Austria), introducing draft resolution A/C.6/46/L.11, said that the sponsors had been joined by Canada, Cyprus, Denmark, Germany, Guinea, Hungary, India, Kenya, Myanmar, the Netherlands, the Sudan, Sweden, Thailand, Uruguay and Yemen.

24. In part A of the draft resolution, the General Assembly acknowledged the valuable contribution to be rendered by the United Nations Commission on International Trade Law within the framework of the United Nations Decade of International Law, particularly with regard to the dissemination of international trade law. It also commended the Commission on its decision to organize, as a first step in the preparation of its programme of activities for the Decade, a Congress on International Trade Law during the twenty-fifth session of the Commission. The General Assembly also took note of the successful conclusion of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade, which had resulted in the adoption of the United Nations Convention on such liability.

25. It was the conviction of the sponsors of the draft resolution that UNCITRAL had a vital role to play in providing training and assistance in the field of international trade law, particularly to the developing countries. The draft resolution accordingly expressed appreciation to the Commission for organizing the symposium on international trade law, held in conjunction with its twenty-fourth session, and the regional seminar on international trade law, held in Cameroon in January 1991.

(Ms. Kofler, Austria)

26. Part B of the draft resolution took note of the report of the Secretary-General on possible ways of assisting developing countries to attend meetings of the United Nations Commission on International Trade Law. It also requested the Fifth Committee to consider, in order to ensure full participation by all Member States, granting travel assistance, within existing resources, to the least developed countries that were members of the Commission, as well as, on an exceptional basis, to other developing countries members of the Commission. As an additional measure, the draft resolution recommended that the Commission rationalize the organization of its work and consider, in particular, the holding of consecutive meetings of its working group.

27. Two changes should be made in the draft: the words "The General Assembly" should be inserted at the beginning of part B, and the word "group" at the end of part B, paragraph 3, of the English version should be replaced by "groups" in order to bring that text into line with the other language versions.

28. The pragmatic approach of the Commission had been an important element of its success and that pragmatic spirit was reflected in the draft text before the Committee. She therefore hoped that the draft resolution would be adopted by the Committee without a vote.

29. Mr. NTSAMA (Cameroon), speaking in explanation of his delegation's position, said that, with reference to part B, paragraph 2, of the draft resolution, he was unclear as to whether the General Assembly would request one of its subsidiary organs to consider the implementation of its decision. Secondly, with reference to the same paragraph, he wondered why it was necessary to include any reference to the Fifth Committee since the travel assistance in question would be granted from within existing resources.

30. The CHAIRMAN said that, while the General Assembly did instruct the organs under its authority to implement its decisions, the consensus on the draft resolution had been achieved with considerable difficulty and it had been decided to accept the text in its current form. He wished to point out, however, that in part B, paragraph 4, the General Assembly requested the Secretary-General to submit a report on the implementation of the resolution at its forty-seventh session.

31. Mr. CHATURVEDI (India) said that his delegation supported the draft resolution as well as the work of UNCITRAL, in whose deliberations it had always participated. The Commission had performed a useful task in elaborating a number of international conventions and in organizing seminars in various parts of the world. His delegation supported the provisions in part B of the draft resolution aimed at providing assistance to enable the developing countries to participate in the work of the Commission.

32. Mr. NYAMIKEH (Ghana) said that, while his delegation supported the draft resolution, it shared the concern of the representative of Cameroon regarding the reference to the Fifth Committee in part B, paragraph 2, of the draft resolution. The General Assembly oversaw all of its subsidiary bodies and its request to the Fifth Committee was therefore an inexplicable precedent.

33. The CHAIRMAN said that the request in part B, paragraph 2, should not be construed as a precedent. The General Assembly alone adopted the rules and procedures that governed its work.

34. Draft resolution A/C.6/46/L.11, as orally revised, was adopted.

The meeting rose at 4.25 p.m.